Supreme Court, U.S.
FILED

(1) 97 1096 DEC 29 1997

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1997

GERTRUDE DAVIS GOROD

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS
JUDGE ELIZABETH O'NEILL LA STAITI
ROBERT E. PECK
STEPHEN J. HANNA

Respondents.

Petition For Writ Of Certiorari

To The First Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

GERTRUDE GOROD
P.O. BOX 856
EVERETT MASSACHUSETTS 02149

(781) 322-8223

BEST AVAILABLE COPY

21 pp

ISSUES PRESENTED

I.

Should this court grant certiorari to restore the petitioner's United States Constitutional Rights, Civil Rights, and Massachusetts Statute Rights, which she was deprived of by the United States Appeals Court For The First Circuit.

II.

The inferior court erred in law in dismissing the petitioner's action.

III.

United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty or property without due process of law".

IV.

United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make of enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty or property without due process of law: nor deny to any

person within its jurisdiction the equal protection of the law:

V.

Petitioner's was deprived of her Civil Rights when she was discriminated against because of her age and religion.

VI.

Massachusetts Civil Rights Act, M.G.L. Chapter 12 § 111 protects citizens from being deprived of their United States Constitutional Rights by individuals and allows the filing of a Civil Action against these parties.

VII.

Massachusetts Declaration of Rights: Article XI: remedy by recourse of the laws: obtaining of right and justice, completely promptly, "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it: Completely, and without denial: promptly, and without delay.....".

VIII.

Massachusetts Rules of Civil Appellate Procedure Rule 3 state in pertinent part: "Filing

Notice of Appeal. An appeal permitted by law from the lower court shall be taken by filing a notice of appeal with the clerk of the lower court....."

IX.

The lower court was bias, prejudice and obstructed justice.

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Petitioner, Gertrude Davis Gorod, respectfully prays that a Writ of Certiorari issue to review decision of the United States Appeals Court for the First Circuit and grant her a trial by jury and any other relief the court deems appropriate.

OPINIONS BELOW

October 30, 1996, the United States District Court dismissed the petitioner's action sua sponte. Before defendants had submitted any responsive pleadings (app. p. 15).

October 9, 1997, The United States Appeals Court dismissal was affirmed (app. 13).

JURISDICTION

October 9, 1997, the United States Appeals Court dismissal was affirmed.

This petition is filed within the 90 days of the United States Appeals Court's decision.

This Court's jurisdiction is invoked under 28 United States Code.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment to the United States Constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the law"

STATEMENT OF THE CASE

May 7, 1996, the petitioner appeared in New Bedford, Massachusetts for a hearing before the respondent, Judge La Staiti.

During the hearing the petitioner took exceptions to the issues and informed the respondent that she was going to appeal the issues.

Respondent La Staiti accepted, the fact, that the petitioner was going to appeal her decision, she said, "she would note the objec-

tions.

Petitioner aggrieved by the court's decisions pursuant to Massachusetts Rules of Appellate Procedure Rule 3 "Notice of Appeal" on May 30, 1996, the petitioner appeared in the Bristol County Court to file her Notice of Appeal and Cassette Copy Request. The Clerk would not accept the petitioner's Notice of Appeal and Cassette Copy Request. The clerk said that the respondent La Staiti said, "the court will not let you file any appeals, no pleadings of any type, moreover, you are banned from filing any other action in this court".

Appellant went to the Registrar, Robert E. Peck's Office to find out what was going on in that court and to inform him that petitioner's Constitutional Rights were being deprived, however, it was to no avail.

Petitioner left the court and went to the post office and mailed her Notice of Appeal and Cassette Copy Request to the attention of Robert E. Peck, Registrar, however, all these documents were returned to the petitioner by the respondent Hanna.

Petitioner exhausted all resources available to her to have this matter resolved, however, it proved fruitless.

October 28, 1996, the petitioner filed her Complaint in the United States Disrict Court for the First District (app. p. 1).

October 30, 1996, the petitioner received an

Order of Dismissal dated October, 30, 1996, (app. p. 15), however, the envelope in which the Order of Dismissal was mailed bears the date of October 29, 1996 (app. P. 11).

November 1, 1996, the appellant filed an appeal to the United States Court of Appeals.

Petitioner was amazed to learn that not only was she deprived of her Constitutional Rights, and discriminated against in the Bristol County Probate Court, she was experiencing the same thing in the United States District Court.

The petitioner made several attempts to have the record assembled and forward to the United States Appeals Court for the First Circuit, however, it was to no avail.

Petitioner was compelled to write to the Honorable Chief Judge Tauro for his help in having the record forward to the United States Appeals Court for the First Circuit (app. p.9).

Petitioner's record was assembled and forward to the united States Appeals Court for the First Circuit.

October 9, 1997, the United States Appeals Court dismissed the petitioner's action and decision was **NOT FOR PUBLICATION** (app. p. 12).

This action is now before this Honorable Court.

ARGUMENT

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURT ERRED IN LAW IN DISMISSING THE PETITIONER'S ACTION

Prior to filing Complaint in the Court the petitioner conferred with the Pro Se Clerk in the United States District Court.

The clerk furnished the appellant with forms and instructions.

Instructions given to the appellant set forth in **STEP BY STEP** "Do not worry that your Complaint is not professionally written. The court will take into consideration that you are a Pro Se litigant and untrained in drafting legal documents" (app. p. 8).

Petitioner, therefore, complied with all procedures in filing Complaint as set forth in Step By Step.

In addition, petitioner had the Pro Se Clerk review her document before she paid her filing fee and was informed that Complaint was all right.

October 28, 1996, at 2:31 P.M. petitioner filed her Complaint (app. p.1).

October 30, 1996, the petitioner received an Order of Dismissal dated October 30, 1996, however, envelope in which the Order of Dismissal was mailed bears the date October 29, 1996, (app. p. 11).

The facts clearly reveal that a decision was made in one day, perhaps even less than a day.

Based on the court's case load it does not make sense that a honest decision could be made in one day based merely on a Complaint.

SEE CONLEY v. GIBSON 355 U.S. 14 "Failure of the Complaint to set forth specific facts to support its allegation was not a sufficient ground for dismissal of the suit, since the Federal Rules of Civil Procedure do not require to set out in detail the facts upon which he basis his claim". **IN C.F. MATY v. GRASSELLI CHEMICAL CO.,** 303 U.S. 197, "Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits".

SEE LITERATURE INC.v. QUINN, 482 F. 2d 372, 374 (1st Cir. 1973) **RICKETTS v. MIDWEST NATIONAL BANK** 874 F. 2d 1177, 1185 (7th Cir. 1989) "where a sua sponte dismissal is contemplated by a district court, that court must first give "both notice of the court's intention and an opportunity to respond").

Petitioner was not given notice of the court's intention and therefore was not given the opportunity to respond.

Both cases of authorities based on the court's decisions were vacated and remanded, therefore, the petitioner's action should have been vacated and remanded also (app. p. 13).

The inferior court erred in law in dismissing the petitioner's Complaint, this fact is clearly

evident when the Appeals Court's decision is marked **(NOT FOR PUBLICATION)** (app. p. 12).

SEE HAINES v. KERNER, 404 U.S. 519 "the court must read a pro se Complaint liberally".

II. CERTIORARI SHOULD BE GRANTED BECAUSE THE PETITIONER WAS DEPRIVED OF HER CONSTITUTIONAL RIGHTS OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW

Respondent, Stephen J. Hanna refused to accept petitioner's Notice of Appeal and Cassette Copy Request.

Therefore, petitioner mailed her Notice of Appeal and Cassette Copy Request to respondent, Robert E. Peck, who returned them to the petitioner.

Whereby, the petitioner's Constitutional Rights of due process of law and equal protection of the law were violated.

The United States Constitution Amendment V: states in pertinent part: "cannont be deprived of life, liberty, or property, without due process of law"

The United States Constitution Amendment XIV: states: "All persons born or naturalized in the United States, and subject to the jurisdication thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state deprive any person of life, liberty or property, without due due process of law: nor deny to any person with-

in its jurisdiction the equal protection of the law".

III. CERTIORARI SHOULD BE GRANTED BECAUSE PETITIONER WAS DEPRIVED OF HER CIVIL RIGHTS WHEN SHE WAS DISCRIMINATED AGAINST BECAUSE OF HER AGE AND RELIGION

Civil Rights Act clearly states that one can not be discriminated against because of their age and religion.

Petitioner appeared in the Bristol County Court to file her Notice of Appeal and Cassette Copy Reguest, the respondent, Hanna refused to accept the petitioner's documents.

However, all documents were accepted from others, these persons were younger than the petitioner and were of a different religion than the petitioner.

IV. CERTIORARI SHOULD BE GRANTED BECAUSE PETITIONER WAS DEPRIVED OF HER RIGHTS UNDER MASSACHUSETTS CIVIL RIGHTS ACT

Massachusetts Civil Rights Act, M.G.L. Chapter 12 § 111 "protects citizens from being deprived of their United States Constitutional Rights by individuals and allow the filing civil action against these parties.

All respondents have deprived the petitioner of her Constitutional Rights, not accepting the petitioner's Notice of Appeal and Cassette Copy Request, resulting in the petitioner not being able to appeal the court's decision. Therefore

her rights to due process of law and equal protection of the law were deprived.

Petitioner's Civil Action against all respondents is appropriate since all respondents deprived her of her Constitutional Rights.

V. CERTIORARI SHOULD BE GRANTED BECAUSE PETITIONER WAS DEPRIVED OF HER RIGHTS UNDER MASSACHUSETTS DECLARATION OF RIGHTS ARTICLE XI

Massachusetts Declaration of Rights Article XI: remedy by recourse of the laws: Obtaining of right and justice, completely promptly, "Every subject of the commonwealth ought to find a certain remedy, by have recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it: Completely, and without delay".

All respondents deprived the petitioner the right to have recourse for all the injuries and wrongs she received in her person, property and character, by depriving her the right to appeal a court decision.

VI. CERTIORARI SHOULD BE GRANTED BECAUSE THE PETITIONER'S RIGHT TO APPEAL WAS DEPRIVED WHICH SHE WAS ENTITLED TO UNDER THE MASSACHUSETTS RULES OF CIVIL APPELLATE PROCEDURE RULE 3(a)

Massachusetts Rules of Civil Procedure Rule 3 (a) state in pertinent Part: "Filing the notice of appeal. An appeal permitted by law from the lower court shall be taken by filing a notice with the clerk of the lower court.....".

Petitioner appeared in the lower court to file her Notice of Appeal and Cassette Copy request, however, respondent, Hanna refused to accept the petitioner's Notice of Appeal and Cassette Copy Request.

Hanna's refusal to accept the petitioner's Notice of Appeal is a direct violation of the Massachusetts Rules of Civil Appellate Procedure Rule 3.

Petitioner mailed her Notice of Appeal and Cassette Copy Request to respondent, Peck.

Respondent Peck, returned petitioner's Notice of Appeal and Cassette Copy Request, back to the petitioner.

Peck's refusal to accept the petitioner's Notice of Appeal is a direct violation of the Massachusetts Rules of Civil Appellate Procedure Rule 3.

VII. CERTIORARI SHOULD BE GRANTED BECAUSE THE LOWER COURT WAS BIAS, PREJUDICE AND OBSTRUCTED JUSTICE

Judge Harrington made a decision in one day perhaps even less than a day, it does not make sense that a honest decision could be made in one day or less. Judge Harrington, violated his Oath when he did not do equal justice to the poor (app. p. 14). Petitioner filed a Notice of Appeal and the record was not assembled and forward to the Appeals Court, therefore, there was an obstruction of justice. In addition, petitioner was compelled to request the help of Chief Justice Tauro in order to get the record assembled and forward to the Appeals Court (app. P. 9).

The bias, prejudice and obstruction of justice was carried over to the Appeals Court these facts are evident when the Appeals Court's decision was based on cases that were vacated and remanded. Therefore, the inferior court erred in not vacating and remanding the petitioner's action.

CONCLUSION

WHEREFORE, Pettioner, Gertrude Davis Gorod respectfully prays that a Writ of Certiorari issue and the order be vacated and remanded consistent with the other cases based on Appeals Court's decision.

Respectfully submitted,
Gertrude Davis Gorod

Gertrude Davis Gorod
P.O. Box 856
Everett, Ma 02149
(781) 322-8223

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Gertrude Davis Gorod, Plaintiff	)	
vs.	)	CIVIL ACTION
	)	No. 96-12178
Commonwealth of Massachusetts	)	EFH
Judge Elizabeth O'Neill La Staiti	)	
Robert E. Peck	)	
Stephen J. Hanna, Defendants	)	COURT'S STAMP

OCT. 28, 1996
filed 2:31 P.M.

COMPLAINT

Parties

1.) The plaintiff, Gertrude Davis Gorod, is a resident of Malden, Middlesex County and is a citizen of the United States.

2.) The defendant, Commonwealth of Massachusetts has its prime place of business Suffolk County.

3.) Defendant, Elizabeth O'Neill La Staiti is employed for the Commonwealth of Massachusetts, at the Probate and Family Court Department 11 Court Street Taunton, Massachusetts, it is unknown to the plaintiff whether or not the defendant is a citizen of the United States.

4.) Defendant, Robert E. Peck is employed for the Commonwealth of Massachusetts, at the Probate and Family Court Department 11 Court Street, Taunton, Massachusetts, it is unknown to the plaintiff whether or not the defendant is a

citizen of the United States.

5.) Defendant, Stephen J. Hanna is employed for The Commonwealth of Massachusetts, at the Probate and Family Court Department 11 court Street Taunton, Massachusetts, it is unknown to the plaintiff whether or not the defendant is a citizen of the United States.

Jurisdiction

6.) This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.
Violations of the United States Constitution Amendments V and XIV.

Facts

7.) May 7, 1996, the plaintiff appeared before the defendant Judge La Staiti, during the hearing objections were taken by the plaintiff. Plaintiff also informed the defendant that she was going to appeal the issues that she objected to, the defendant accepted the fact that the plaintiff was going to file an appeal on the action.

8.) Plaintiff aggrieved by the court's decision pursuant to M.G.L. Rule 3 "Notice of Appeal required by Rule 3 shall be filed with the Clerk of the lower Court." Plaintiff appeared in the lower court to file her Notice of Appeal and Cassette Copy Request.

9.) May 30, 1996, Plaintiff appeared in the Bristol County Probate & Family Court to file her Notice of Appeal and Cassette

Copy Request. The place became a disaster zone. The clerk would not accept plaintiff's Notice of Appeal and Casette Copy Request. The clerk said that Judge La Staiti said, "the court will not let you file any appeals, no pleadings of any type, moreover, you are banned from filing any other action in this court".

10.) Plaintiff went to the Registrar, Robert E. Peck's office to find out what was going on in that court and to inform him that plaintiff's Constitutional Rights were being violated, however, it was to no avail. Plaintiff was leaving Peck's office when his secretary Eleanor Alexio got up from her desk and grabbed the plaintiff by the arm causing her severe bodily harm.

11.) May 30, 1996, when plaintiff left the court, she went to the Post Office and mailed her Notice of Appeal and Cassette Copy Request to the attention of Robert E. Peck, Registrar, however, all these documents were returned to the plaintiff.

Cause of Action

12.) Defendants denied the plaintiff her Constitutional Rights as set forth in the United States Constitution Amendents V and XIV, which guarantees the plaintiff the right to due process of law and equal protection under the law. Defendants denied plaintiff's Constitutional Rights when

they refused to take her Notice of Appeal, refused to give her a Cassette Copy, refused to have the plaintiff's attorney take the deposition of Edith Tabachnick (who brought the action in the lower court). Due process of law is a fundamental, constitution guarantee that all proceedings be fair and equal protection of law guarantees that no state shall deprive any person the right to equal protection under the law. In addition, the defendants violated their own M.G.L. Rule 3 "Notices of Appeals are to be filed with the clerk of the lower Court." Facts indicate a conspiracy by defendants to injure plaintiff.

13.) Defendant La Staiti violated the plaintiff's Constitutional Rights Amendments V and XiV when she said that "the court would not let the plaintiff file any appeals, no pleadings of any type and that plaintiff is banned from filing any other action in this court". Defendant would not allow any discovery when plaintiff's attorney filed a Motion To Compel the taking of Edith Tabachnick's Deposition (plaintiff who brought the action in the lower court). Plaintiff's attorney filed a Motion To Compel the Taking of Plaintiff, Edith Tabachnick's Depostion and Motion Compelling Answers to Interrogatories. Plaintiff's attorney asked the defendant why she is not ruling on his motions since he is entitled to dis-

covery the defendant's reply was "I can do what I want". The defendant has removed the administrator who was paying the tax and water bills out of his own monies. Now tax and water bills are not being paid leaving the possibility that the town will take the property for non-payment of both taxes and water bills, therefore, jeopardizing the plaintiff's inheritance. The defendant has also violated M.G.L. Rule 3. The defendant knowingly and wilfully has obstructed justice. The defendant's misconduct and arrogance has caused the plaintiff great pain and suffering. Facts indicate a conspiracy by defendants to injure plaintiff.

14.) Defendant Peck violated the plaintiff's Constitutional Rights Amendments V and XIV when he would not let the plaintiff file a Notice of Appeal and Cassette Copy request. Defendant obstructed justice and violated M.G.L Rule 3, causing plaintiff pain and and suffering. Facts indicate a conspiracy by defendants to injure plaintiff.

15.) Defendant Hanna Violated the plaintiff's Constitutional Rights Amendments V and XIV when he would not let the plaintiff file a Notice of Appeal and Cassette Copy Request. Defendant obstructed justice, and violated M.G.L Rule 3, causing the plaintiff great pain and suffering.

The plaintiff seeks the following relief from the Court:

1. Damages against the Commonwealth of Massachusetts in the amount of $450,000. Puntive damages in the amount of $450,000.00.
2. Damages against Defendant Elizabeth O'Neill La Staiti in the amount of $800,000.00. Pain and Sufering in the amount of $50,000.00, Puntive Damages in the amount of $950,000.00.
3. Damages against Defendant Robert E. Peck in the amount of $675,000.00. Pain and suffering in the amount of $50,000.00. Puntive damages in the amount of $775,000.00.
4. Damages against Defendant Stephen J. Hanna in the amount of $675,000.00. Pain and suffering in the amount of $50,000.00. Puntive damages in the amount of $775,000.00.

WHEREFORE, the plaintiff demands judgment against the defendants and any other relief the court deems appropriate.

16.) The plaintiff demands trial by jury.

By,

_____

Gertrude Davis Gorod
P.O. Box 856
Everett, Ma 02149

STEP ON: WRITE YOUR COMPLAINT

All cases are comprised of documents prepared and filed by litigants. The most common documents are the complaint, answer and motions. The first document that you must write is called a complaint -(Attachment 1). The function of the Complaint is to tell the Court and defendant reason for filing the lawsuit and what relief you desire. The Complaint is made up of four main parts:

1. The NAME AND ADDRESS of the plaintiff and the defendant, These are usually listed in the first and second paragraphs respectively. If there is more than one defendant, list each defendant's name and address in a separate addition paragraphs.

2. The JURISDICTION or reason your case is being filed in this federal court See 28 U.S.C. §1331 et seq.

3. The ALLEGATIONS or claims that you are making against the defendant. Place each allegation in a short,clearly written paragraph. See Rule 10 Federal Rules of Civil Procedure.

4. The RELIEF you are seeking from the court. This can be money or something you want the judge to make the defendant do or stop doing. This information is usually written in the last paragraph of the COMPLAINT.

Please be sure to number each paragraph except for the paragraph that asks the court for relief. If you believe you are entitled to a trial by jury,

you must indicate in a paragraph following the relief requested that you claim trial by jury See Rule 38(b) of the Federal Rules of Civil Procedure.

Do not worry that your COMPLAINT is not professionally written. The court will take into consideration that you are a **PRO SE** litigant and untrained in drafting legal documents.

LOCAL RULES OF THE COURT

December 30, 1996

Chief Judge Joseph Tauro
Federal District Court Post Office
Court House
90 Devonshire Street
Room 1615
Boston, Ma 02109

RE: Gertrude Davis Gorod Civil Action No. 96-12178
v. EFH
Commonwealth of Massachusetts
Judge Elizabeth O'Neill La Staiti
Robert E. Peck
Stephen J. Hanna

Dear Honorable Chief Judge Tauro:

October 28, 1996, I filed the above-cited action in the United States District Court for the District Court for the District of Massachusetts (Copy of Complaint is attached hereto).

October 30, 1996, I received an Order of Dismissal dated October 30, 1996, However, the envelope in which the Order of Dismissal was mailed in is dated October 29, 1996 (copy of Order of Dismissal and copy of postmarked envelope are both attached hereto).

The facts clearly reveal that the decision was made in one day.

Based on the courts case load it does not make sense that a honest decision could be made in one day.

November 1, 1996, I filed an appeal to the United States Appeals Court (Copy of Notice of Appeal and receipt that the court fee for the appeal was paid is attached hereto).

I have made several attempts to have the record assembled and forward to the United States Appeals Court for the First Circuit, however, it has been to no avail.

Therefore, I am requesting you to take appropriate action in having the record forward to the United States Appeal Court for the First Circuit as soon as possible.

Thank you for your cooperation in this matter.

Very truly yours,
s/Gertrude Davis Gorod

Encs
CERTIFIED MAIL:
P 576 472 960

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
90 DEVONSHIRE STREET
BOSTON, MASSSACHUSETTS

POSTMARK OCTOBER 29, 1996

(HANDWRITTEN) Gertrude Davis Gorod
Box 856
Everett, Ma 02149

(NOT FOR PUBLICATION)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1028
No. 97-1767

GERTRUDE DAVIS GOROD,
Plaintiff, Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS, ET AL.,
Defendants, Appellees.

APPEALS FROM THE United States District Court

FOR THE DISTRICT OF MASSACHUSETTS

(Hon. Edward F. Harrington, U.S. District Judge)

Before

Torruella, Chief Judge,
Stahl and Lynch, Circuit Judges.

Gertrude Davis Gorod on briefs pro se.
Scott Harshbarger, Attorney General, and Jason Barshak, Assistant Attorney General, on briefs for appellees.

October 9, 1997

Per Curiam. Appellant Gertrude Gorod seeks to overturn a district court order that dismissed her complaint for damages under 42 U.S.C. § 1983 for the failure to state a claim upon which relief can be granted. While this court generally disfavors such dismissals absent advance notice and an opportunity to amend, see, e.g., Watt v. City of Boston, 35 F.3d 13, 14-15 (1st Cir. 1994); Street v. Fair, 918 F.2d 269,272 (1st Cir. (1990 (per curiam). here it is clear that appellant cannot prove any set of facts that would entitle her to relief. Accordingly, the order of dismissal is summarily affirmed. See Local Rule 27.1. Appellant also challenges an order denying her motion to default the defendants. This order was issued after judgment of dismissal had entered and the case was docketed on appeal. It is therefore a nullity. Appeal No. 97-1767 is dismissed. 1

1We further note that the defendants were never in default. The case was dismissed before their answer became due.

UNITED STATES DISTRICT JUDGE"S OATH

I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as United States District Judge according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same: that I take this obligation freely, without any mental reservation or purpose of evasion: and that I will well and faithfully discharge the duties of the office on which I'm about to enter. So help me God.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Gertrude Davis Gorod, Plaintiff	)
v.	)
Commonwealth of Massachusetts, et al, Defendants	)

ORDER OF DISMISSAL

October 30, 1996

HARRINGTON, D.J.

Upon review of the Complaint filed in the above-entitled case the Court, sua sponte, dismissed same on the ground that the complaint fails to state a claim upon which relief can be granted in accordance with the provisions of Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SO ORDERED.

s/ Edward F. Harrington
EdWARD F. Harrington
United States District Judge